

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2375/2023

Shri Shivshankar (Mahadev) Hanuman
Mandir, Amravati, Registered Trust
having Reg. No.A-1855, through its
President, Harish Shankarlal Khandelwal,
Khandelwal Market, Ambadevi Road,
Amravati, Tq. & Dist. Amravati.

... Petitioner

- Versus -

1. The State of Maharashtra,
through the Secretary Urban
Development Department,
Mantralaya, Mumbai.
2. The Municipal Corporation of
City of Amravati, through its
Commissioner, Amravati Municipal
Corporation, Rajkamal Chowk,
Amravati.
3. Assistant Director of Town Planner,
Municipal Corporation, Amravati
Municipal Corporation, Rajkamal
Chowk, Amravati.

... Respondents

Mr. G.K. Mundhada, Counsel for the Petitioner.
Ms. S.S. Jachak, Assistant Government Pleader for Respondent No.1/State.
Mr. Shriram Chopde, Counsel h/f Mr. R.D. Dharmadhikari, Counsel for
Respondent Nos.2 and 3.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 21.6.2023

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. By this petition, the petitioner is seeking relief of declaration that the land owned by it stands lapsed from reservation under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (For short "Act of 1966"). The petitioner is the owner and person interested in development of Survey No.94/1A, total area admeasuring 0.34 H.R. of Mouja Wadali, Tq. and Dist. Amravati. It is situated in the corporation limit of Municipal Council of the City of Amravati.

3. The development plan of the city of Amravati was sanctioned by the State Government. It was published under

Sub-Section (6) of Section 31 of the Act of 1966 and it came into force w.e.f. 25.2.1993. In this development plan, the said land of petitioner is affected by the reservation of *Dhobighat* Site No.174 area required 0.225 H.R. by the respondents. The said land was reserved for the said purpose. The petitioner, through his Counsel, had issued purchase notice under Section 127 of the Act of 1966 in office of respondent Nos.2 and 3 on 25.6.2015 and by said notice, the petitioner called upon respondent Nos.2 and 3 to acquire the said land within the statutory period from the date of service of the said notice. After receipt of said notice, the proposal for acquisition was submitted by respondent No.2 to the Collector, Amravati on 28.10.2015. Said proposal for acquisition dated 28.10.2015 was submitted by issuing notification under Section 126 of the Act of 1966 read with Section 6 of the Land Acquisition Act, 1894 (for short "Act of 1894") read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short

“Act of 2013). Thus, respondent No.2 submitted incomplete proposal for acquisition of the said land.

4. Respondent No.3 on 4.4.2016 vide its letter offered compensation for the said land to petitioner in the form of Transferable Development Right (T.D.R.). The petitioner was interested in development of said land hence he was taking regular follow-up of acquisition proceedings of land from office bearers of respondent Nos.2 and 3. In continuation of the said proceedings, the office bearers of respondent No.3 orally demanded copies of 7/12 extracts and measurement sheet and it was provided by the petitioner. On 10.4.2017 again respondent No.3 offered compensation in the form of T.D.R. for the said land to the petitioner. As the petitioner was not interested in the T.D.R. compensation, he refused for it.

5. Since the receipt of notice issued under Section 127 of the Act of 1966 on 25.6.2015 till the date of filing this petition no notification under Section 126 of the Act of 1966 read with Section 6 of the Act of 1894 read with Section 19 of the Act of

2013 is published and acquisition proceedings of the said land owned by the petitioner kept for above stated purpose in the development plan since 25.2.1993 is not completed till the date of filing of petition. Due to allocation and designation of the land in development plan the petitioner is unable to develop the said land as per the adjacent land use due to operation of Section 46 of the Act of 1966. On 28.11.2018 Second Revised Draft Development Plan under Section 26 of the Act of 1966 was published in official gazette of Government of Maharashtra for suggestions and objections on 6.12.2018. In Second Revised Draft Development Plan said land of petitioner is not reserved for any purpose but due to its allocation and designation in the First Revised Development Plan the petitioner is not entitled to develop the said land.

6. The Counsel for the petitioner has submitted that the said land is reserved in the First Development Plan of Amravati city which came into force on 25.2.1993. More than 30 years has

been passed since the First Development Plan of Amravati city which came into force on 25.2.1993 but till this date acquisition of the said land of the petitioner is not completed as no notification under Section 126 of the Act of 1966 read with Section 19 of the Act of 2013 is issued.

7. After completion of statutory period of 10 years from the date on which the development plan came into force, any person interested in development of land reserved in development plan can issue notice under Section 126 of the Act of 1966 and it has to be completed within the statutory period of 24 months from the date of receipt of the notice under Section 127 of the Act of 1966 otherwise the reservation stands lapsed. The notification under Section 6 of the Act of 1894 is required to be issued and published in order to take steps for acquisition to be commenced within a period of 24 months from the date of receipt of notice. In the instant case the notification under Section 6 of the Act of 1894 or under Section 19 of the Act of

2013 has not been issued or published till the date of filing of the present petition. The notice under Section 127 came to be issued on 25.6.2015 and the statutory period of 24 months came to an end on 24.6.2017. Till that date no acquisition proceedings are completed by publishing notice under Section 126 of the Act of 1966 read with Section 19 of the Act of 2013 equivalent to Section 6 of the Act of 1894.

8. More than 5 years have been passed after submission of incomplete proposal for acquisition by respondent No.2 to the Collector, Amravati and as per the Act of 2013, the relevant amendment incorporated in the Act of 1966, acquisition proceedings initiated has to be completed within a period of a reasonable time. The right accrued to petitioner for lapsing of reservation on the said land cannot be taken away by the respondents due to coming into place of Second Revised Draft Development Plan under Section 126 of the Act of 1966. The petitioner relied on the judgment in the case of *Ashok Shriram*

Kulkarni V/s. State of Maharashtra, Maharashtra Housing and Area Development Authority, Municipal Council reported in 2017 4 Mh.L.J. 382.

9. The learned Assistant Government Pleader for respondent Nos.1 and 3 submitted that in response to the purchase notice, the respondents immediately forwarded the proposal for acquisition submitted by respondent No.2 to the Collector, Amravati on 28.10.2015 by issuing notification under Section 126 of the Act of 1966 and respondent No.3 on 4.4.2016 offered compensation for the land to the petitioner in the form of T.D.R. The revision of Final Development Plan was sanctioned under Sub-Section (6) of Section 31 of the Act of 1966 of Amravati city as per Section 38 read with Section 26 of the Act of 1966. Notification for Second Revised Development Plan of Amravati city under Section 26 of the Act of 1966 was published in official gazette of Government of Maharashtra for suggestions and objections on 6.12.2018. In Second Revised Draft

Development Plan the land of petitioner is included in residential purpose. Respondent Nos.2 and 3 admitted that due to allocation and designation of the said land in development plan, the petitioner is not able to develop the said land as per the adjacent land use due to operation of Section 46 of the Act of 1966. The financial position of respondents is weak. Acquisition proposal is forwarded to the Collector, Amravati. Notification under Sub-Sections (2) and (4) of Section 126 of the Act of 1966 had not been published till this date read with Section 6 of the Act of 1894 and under Section 19 of the Act of 2013.

10. After considering the submissions made by both the parties and after going through the record it appears that the purchase notice dated 25.6.2015 has been served on the respondents. The statutory period of 24 months has thus expired on 24.6.2017. By that time, no notification under Section 126 of the Act of 1966 read with Section 19 of the Act of 2013 has been issued or published. Thus, it is clear that no steps for acquisition of land owned by the petitioner have been taken within the

period of 24 months and thus the reservation has lapsed and the benefit would be accrued to the petitioner. The judgment relied upon by the petitioner also supports the case of the petitioner. The Municipal Corporation by its letter dated 4.4.2016 has offered Transferable Development Rights (TDR) to the petitioner. In view of the judgment of the Full Bench in Shree Vinayak Builders and Developers, Nagpur V/s. State of Maharashtra and others reported in **2022(4) Mh.L.J. 739** offer of T.D.R. is not a step towards acquisition. Such offer is thus of no consequence.

11. For the aforesaid reasons, the petition is allowed.

12. It is held that reservation of the petitioner's land at serial No.174 for Dhobighat, Survey No.94/1 A admeasuring 0.34 R, Mouja Wadali, Tq. and Dist. Amravati has lapsed under Section 127 of the Act of 1966.

13. The respondent No.1 shall within a period of six weeks of receiving copy of the judgment publish notification in the Official Gazette indicating lapsing of the aforesaid reservation.

14. The petitioner is free to develop its land in accordance with the development plan as permissible for the adjacent land.

15. Rule is made absolute in the above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)